Communications Act 2003

2003 CHAPTER 21

PART 5 U.K.

COMPETITION IN COMMUNICATIONS MARKETS

CHAPTER 1 U.K.

FUNCTIONS OF OFCOM UNDER COMPETITION LEGISLATION

369 Matters in relation to which OFCOM have competition functions U.K.

(1) In this Chapter references to communications matters are references to any one or more of the following—

(a) the provision of electronic communications networks;

(b) the provision of electronic communications services;

(c) the provision or making available of services or facilities which are provided or made available—

(i) by means of, or in association with the provision (by the same person or another) of, an electronic communications network or electronic communications service; or

(ii) for the purpose of facilitating the use of any such network or service (whether provided by the same person or another);

(d) apparatus used for providing or making available anything mentioned in the preceding paragraphs;

(e) broadcasting and related matters.

[[F1](f) the provision of postal services.**]**

(2) The Secretary of State may by order make such amendments of subsection (1) as he may consider appropriate for the purpose of modifying the description of activities in respect of which any of the provisions of this Part—

(a) confer functions on OFCOM under Part 1 of the Competition Act 1998 (c. 41) or relate to the carrying out by OFCOM of those functions; or

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(b) confer functions on OFCOM under Part 4 of the Enterprise Act 2002 (c. 40) or relate to the carrying out by OFCOM of those functions.

(3) No order is to be made containing provision authorised by this section unless a draft of the order has been laid before Parliament and approved by a resolution of each House.

Textual Amendments

F1 S. 369(1)(f) inserted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 62**; S.I. 2011/2329, art. 3

Commencement Information

I1 S. 369(1)(a)-(d)(2)(3) in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I2 S. 369(1)(a)-(d) (2) (3) in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

I3 S. 369(1)(e) in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

370 OFCOM's functions under Part 4 of the Enterprise Act 2002 U.K.

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the **[**[F2]Competition and Markets Authority (referred to in this Part as "the CMA")**]** .

(2) This subsection applies to the functions of the **[**[F3]CMA**]** under Part 4 of the Enterprise Act 2002 (market investigations) (other than sections 166 **[**[F4], 171 and 174E**]**) so far as **[**[F5]those functions—

(a) are exercisable by the CMA Board (within the meaning of Schedule 4 to the Enterprise and Regulatory Reform Act 2013), and

(b) relate to**]** commercial activities connected with communications matters.

(3) So far as necessary for the purposes of, or in connection with, subsections **[**[F6](1) and (2)—

(a) references**]** in Part 4 of the Enterprise Act 2002 to the **[**[F7]CMA**]** (including references in provisions of that Act applied by that Part) shall be construed as including references to OFCOM **[**[F8](except in sections 166, 171 and 174E and where the context otherwise requires);

(b) references in that Part to the CMA carrying out functions under section 5 of the Enterprise Act 2002 are to be construed as including references to OFCOM exercising powers under section 1(3) of this Act to obtain, compile and keep under review information about matters relating to the carrying out of its functions.**]**

[[F9](3A) Section 130A of the Enterprise Act 2002 is to have effect in its application in relation to OFCOM by virtue of subsections (1) and (2)—

(a) as if for subsection (1) of that section there were substituted—

"(1) Where the Office of Communications—

(a) is proposing to fulfil its duties under section 3(1) of the Communications Act 2003 by obtaining, compiling and keeping under review information in relation to a matter for the purposes mentioned in subsection (2), and

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(b) considers that the matter is one in respect of which it would be appropriate for it to exercise its powers under section 174 (investigation) in connection with deciding whether to make a reference under section 131,

the Office of Communications must publish a notice under this section (referred to in this Part as a "market study notice").", and

(b) as if in subsection (2)(a) of that section, for "the acquisition or supply of goods or services of one or more than one description in the United Kingdom" there were substituted "commercial activities connected with communications matters (within the meaning given by section 369(1) of the Communications Act 2003)".**]**

(4) In **[**[F10]subsections (2) and (3A) the references**]** to activities connected with communications matters, so far as **[**[F11]they are references**]** to activities connected with any apparatus falling within paragraph (d) of section 369(1), **[**[F12]include**]** a reference to—

(a) the supply and export of any such apparatus; and

(b) the production or acquisition of any such apparatus for supply or export.

(5) Before the **[**[F13]CMA**]** or OFCOM first exercises in relation to any matter functions which are exercisable concurrently by virtue of this section, that person shall consult the other.

(6) Neither the **[**[F13]CMA**]** nor OFCOM shall exercise in relation to any matter functions which are exercisable concurrently by virtue of this section if functions which are so exercisable have been exercised in relation to that matter by the other.

(7) It shall be the duty of OFCOM, for the purpose of assisting **[**[F14]a CMA group**]** in carrying out an investigation on a **[**[F15]market investigation reference made by OFCOM (under section 131 of the Enterprise Act 2002)**]** by virtue of subsection (1), to give to the **[**[F16]group**]** —

(a) any information which is in OFCOM's possession and relates to matters falling within the scope of the investigation and—

(i) is requested by the **[**[F16]group**]** for that purpose, or

(ii) is information which, in OFCOM's opinion, it would be appropriate for that purpose to give to the **[**[F16]group**]** without any such request;

and

(b) any other assistance which the **[**[F16]group**]** may require, and which it is within OFCOM's power to give, in relation to any such matters,

and the **[**[F16]group**]** , for the purposes of carrying out any such investigation, shall take into account any information given to it for that purpose under this subsection.

[[F17](7A) In subsection (7) "CMA group" has the same meaning as in Schedule 4 to the Enterprise and Regulatory Reform Act 2013.**]**

(8) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to any particular case, that question shall be referred to and determined by the Secretary of State.

(9) No objection shall be taken to anything done under Part 4 of the Enterprise Act 2002 (c. 40) by or in relation to OFCOM on the ground that it should have been done by or in relation to the **[**[F18]CMA**]** .

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(10) Section 117 of the Enterprise Act 2002 (offences of supplying false or misleading information) as applied by section 180 of that Act shall have effect so far as relating to functions exercisable by OFCOM by virtue of this section as if the references in section 117(1)(a) and (2) to the **[**[F18]CMA**]** included references to OFCOM.

(11) Subject to subsection (12), **[**[F19]section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not**]** apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by **[**[F20]section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011**]** if it is a matter to which the **[**[F21]CMA**]** is entitled to have regard in the carrying out of those functions.

Textual Amendments

F2 Words in s. 370(1) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(2)** (with art. 3)

F3 Word in s. 370(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(3)(b)** (with art. 3)

F4 Words in s. 370(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(3)(a)** (with art. 3)

F5 Words in s. 370(2) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(3)(c)** (with art. 3)

F6 Words in s. 370(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(4)(a)** (with art. 3)

F7 Word in s. 370(3)(a) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(4)(b)** (with art. 3)

F8 Words in s. 370(3) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(4)(c)** (with art. 3)

F9 S. 370(3A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(5)** (with art. 3)

F10 Words in s. 370(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(6)(a)** (with art. 3)

F11 Words in s. 370(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(6)(b)** (with art. 3)

F12 Word in s. 370(4) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(6)(c)** (with art. 3)

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F13 Word in s. 370(5)(6) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(7)** (with art. 3)

F14 Words in s. 370(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(8)(a)** (with art. 3)

F15 Words in s. 370(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(8)(b)** (with art. 3)

F16 Word in s. 370(7) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(8)(c)** (with art. 3)

F17 S. 370(7A) inserted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(9)** (with art. 3)

F18 Word in s. 370(9)(10) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(10)** (with art. 3)

F19 Words in s. 370(11) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 63(2)**; S.I. 2011/2329, art. 3

F20 Words in s. 370(12) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 63(3)**; S.I. 2011/2329, art. 3

F21 Word in s. 370(12) substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 161(10)** (with art. 3)

Commencement Information

I4 S. 370 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I5 S. 370 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

371 OFCOM's functions under the Competition Act 1998 U.K.

(1) The functions to which subsection (2) applies shall be concurrent functions of OFCOM and the **[**[F22]CMA**]**.

[[F23](2) This subsection applies to the functions of the **[**[F22]CMA**]** under the provisions of Part 1 of the Competition Act 1998 (other than sections 31D(1) to (6), 38(1) to (6) **[**[F24], 40B(1) to (4)**]** and 51), so far as relating to—

(a) agreements, decisions or concerted practices of the kind mentioned in section 2(1) of that Act,

(b) conduct of the kind mentioned in section 18(1) of that Act, **[**[F25]or**]**

[[F26](c) transferred EU anti-trust commitments or transferred EU anti-trust directions (as defined in section 40ZA of that Act),**]**

which relate to activities connected with communications matters.**]**

(3) So far as necessary for the purposes of, or in connection with, the provisions of subsections (1) and (2), references to the **[**[F22]CMA**]** in Part 1 of the Competition Act 1998 are to be read as including references to OFCOM, except—

(a) **[**[F27]in sections 31D(1) to (6), 38(1) to (6)**][**[F28], 40B(1) to (4)**]**, 51, 52(6) and (8) and 54, and

(b) where the context otherwise requires.

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(4) In subsection (2), the reference to activities connected with communications matters, so far as it is a reference to activities connected with any apparatus falling within paragraph (d) of section 369(1), includes a reference to—

(a) the supply and export of any such apparatus; and

(b) the production or acquisition of any such apparatus for supply or export.

(5) In section 54 of the Competition Act 1998—

(a) in subsection (1) (definition of "regulator" for the purposes of Part 1 of that Act), for paragraph (a) there shall be substituted—

"(a) the Office of Communications;"

(b) in subsection (4) (power to make regulations about concurrent functions of the **[**[F22]CMA**]** and sectoral regulators), "or by Chapter V of Part I of the Transport Act 2000" there shall be inserted " to this Act, by Chapter 5 of Part 1 of the Transport Act 2000 or by section 371 of the Communications Act 2003 ".

(6) In paragraph 5 of Schedule 2 to the Competition Act 1998 (publication of list of networking arrangements under the 1990 Act excluded from the Chapter 1 prohibition) —

(a) in sub-paragraph (2), for "The Independent Television Commission ("ITC")" there shall be substituted " OFCOM "; and

(b) in sub-paragraph (3), for "The ITC" there shall be substituted " OFCOM ".

(7) In section 59(1) of the Competition Act 1998 (interpretation of Part 1), after the definition of "Minister of the Crown" there shall be inserted—

""OFCOM" means the Office of Communications;".

(8) OFCOM may carry out, in respect of activities connected with communications matters and concurrently with the **[**[F22]CMA**]**, the functions of the **[**[F22]CMA**]** under any of paragraphs 3, 7, 19(3) and 36 to 39 of Schedule 13 to the Competition Act 1998 (transitional provisions).

(9) If any question arises as to whether, by virtue of this section, any functions fall to be, or are capable of being, carried out by OFCOM in relation to a particular case, that question shall be referred to and determined by the Secretary of State.

(10) No objection shall be taken to anything done under by or in relation to OFCOM under the Competition Act 1998 (c. 41) on the ground that it should have been done by or in relation to the **[**[F22]CMA**]**.

(11) Subject to subsection (12), **[**[F29]section 3 of this Act (general duties) and section 29 of the Postal Services Act 2011 (duty to secure provision of universal postal service) do not**]** apply in relation to anything done by OFCOM in the carrying out of their functions by virtue of this section.

(12) In the carrying out of any functions by virtue of this section OFCOM may nevertheless have regard to any of the matters in respect of which a duty is imposed by **[**[F30]section 3(1) to (4) of this Act or section 29 of the Postal Services Act 2011**]** if it is a matter to which the **[**[F22]CMA**]** is entitled to have regard in the carrying out of those functions.

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Textual Amendments

F22 Word in s. 371 substituted (1.4.2014) by The Enterprise and Regulatory Reform Act 2013 (Competition) (Consequential, Transitional and Saving Provisions) Order 2014 (S.I. 2014/892), art. 1(1), **Sch. 1 para. 162** (with art. 3)

F23 S. 371(2) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 11(2)(a)**

F24 Words in s. 371(2) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), s. 103(3), **Sch. 15 para. 46**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

F25 Word in s. 371(2)(b) inserted (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), reg. 1(1), **Sch. 1 para. 11(2)(a)** (as substituted by S.I. 2020/1343, regs. 1(1), **23(2)**)

F26 S. 371(2)(c) substituted for s. 371(2)(c)(d) (31.12.2020) by The Competition (Amendment etc.) (EU Exit) Regulations 2019 (S.I. 2019/93), reg. 1(1), **Sch. 1 para. 11(2)(b)** (as substituted by S.I. 2020/1343, regs. 1(1), **23(2)**)

F27 Words in s. 371(3)(a) substituted (1.5.2004) by The Competition Act 1998 and Other Enactments (Amendment) Regulations 2004 (S.I. 2004/1261), reg. 1(a), **Sch. 2 para. 11(2)(b)**

F28 Words in s. 371(3)(a) inserted (1.4.2014) by Enterprise and Regulatory Reform Act 2013 (c. 24), **Sch. 15 para. 46**; S.I. 2014/416, art. 2(1)(f) (with Sch.)

F29 Words in s. 371(11) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 64(2)**; S.I. 2011/2329, art. 3

F30 Words in s. 371(12) substituted (1.10.2011) by Postal Services Act 2011 (c. 5), s. 93(2)(3), **Sch. 12 para. 64(3)**; S.I. 2011/2329, art. 3

Commencement Information

I6 S. 371 in force at 25.7.2003 for specified purposes by S.I. 2003/1900, arts. 1(2), 2(1), **Sch. 1** (with art. 3) (as amended by S.I. 2003/3142, art. 1(3))

I7 S. 371 in force at 29.12.2003 in so far as not already in force by S.I. 2003/3142, **art. 3(2)** (with art. 11)

372 Application of the Competition Act 1998 to news provision U.K.

(1) Section 194A of the 1990 Act (which modifies the Competition Act 1998 in relation to agreements relating to Channel 3 news provision) shall be amended as follows.

(2) In subsection (1) (meaning of "relevant agreement")—

(a) for "section 31A(a)" there shall be substituted " section 280 of the Communications Act 2003 "; and

(b) for "section 31(2)" (in both places) there shall be substituted " that section ".

(3) In subsections (2), (6) and (7)(b)(i) (consultations with and notifications to the Office of Fair Trading), after the words "the OFT", in each place where they occur, there shall be inserted " and OFCOM ".

(4) In subsection (3)(b)—

(a) for "section 31(2)" there shall be substituted " section 280 of the Communications Act 2003 "; and

(b) for "section 31(1) and (2)" there shall be substituted " that section of that Act of 2003 ".

(5) In subsection (5)(c) (declaration without notification), after "the OFT" there shall be inserted " or OFCOM or both of them ".

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(6) In subsection (7) (restriction on exercise by Office of Fair Trading of Chapter III powers)—

(a) for "The OFT may not" there shall be substituted " Neither the OFT nor OFCOM may "; and

(b) for paragraph (a) there shall be substituted—

"(a) the Secretary of State has been notified by the OFT or (as the case may be) by OFCOM of its or their intention to do so; and".

(7) In subsection (8) (notice by Office of Fair Trading to the Secretary of State), for the words from the beginning to "assist" in paragraph (a) there shall be substituted—

"(8) Where the OFT or OFCOM is or are proposing to exercise any Chapter III powers in respect of a relevant agreement, it or they must give the Secretary of State particulars of the agreement and such other information—

(a) it considers or (as the case may be) they consider will assist".

(8) In subsection (9), in the definition of "Chapter III powers", for "given to the OFT by" there shall be substituted " of the OFT and of OFCOM under ".

Commencement Information

I8 S. 372 in force at 29.12.2003 by S.I. 2003/3142, art. 3(1), **Sch. 1** (with art. 11)

Changes to legislation:
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View outstanding changes

Changes and effects yet to be applied to :

- specified provision(s) amendment to earlier commencing SI 2003/1900, art. 3(2) by S.I. 2003/3142 art. 1(3)
- specified provision(s) amendment to earlier commencing SI 2003/3142 by S.I. 2004/1492 art. 2
- specified provision(s) amendment to earlier commencing SI 2003/3142 by S.I. 2004/697 art. 2
- specified provision(s) amendment to earlier commencing SI 2003/3142 art. 4 Sch. 2 by S.I. 2004/545 art. 2

Changes and effects yet to be applied to the whole Act associated Parts and Chapters:
Whole provisions yet to be inserted into this Act (including any effects on those provisions):

- s. 124Q(7)(a) words substituted by 2013 c. 22 Sch. 9 para. 52
- s. 148A and cross-heading inserted by 2022 c. 46 s. 73(2)
- s. 368E(5)(d)(e) inserted by 2017 c. 30 s. 94(3)
- s. 402(2A)(za)(zb) inserted by 2022 c. 46 Sch. para. 2
- Sch. 3A para. 21(6) inserted by 2022 c. 46 Sch. para. 3(5)(b)
- Sch. 3A para. 37(3)(aza) inserted by 2022 c. 46 Sch. para. 3(9)
- Sch. 3A para. 84(1)(aza) inserted by 2022 c. 46 Sch. para. 3(10)
- Sch. 3A para. 103(1)(ca) inserted by 2022 c. 46 s. 70
- Sch. 3A para. 119A inserted by 2022 c. 46 s. 72
- Sch. 3A Pt. 4ZA inserted by 2022 c. 46 s. 67(1)